STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 1, 2010
v	No. 286176 Wayne Circuit Court
KENNETH RICHARD PUTTICK, Defendant-Appellant.	LC No. 07-024657-FC

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 55 months to 10 years' imprisonment for each assault with intent to do great bodily harm less than murder conviction, and two years' imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence presented to establish that he committed the charged offenses. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). This Court defers to the trial court's unique opportunity to assess the credibility of the witnesses who appear before it. MCR 2.613(C); *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Thus, "[t]he trial judge's resolution of a factual issue is entitled to deference. This is particularly true where a factual issue involves the credibility of the witnesses whose testimony is in conflict." *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

The elements of assault with intent to do great bodily harm less than murder are "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The elements of felony-firearm are that (1) the defendant possessed a firearm, (2) during the commission or attempted commission of a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In addition, identity is an

essential element of every crime. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008), citing *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). Thus, the prosecution must present sufficient evidence to prove beyond a reasonable doubt that it was the defendant who committed the crimes alleged. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). "The credibility of identification testimony is a question for the trier of fact that we do not resolve anew." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Considering the evidence presented at trial in the light most favorable to the prosecution, we conclude that there was sufficient evidence presented to permit the trier of fact to find that it was defendant who committed the charged offenses. Aimie Howard testified that after she saw Tiffany Barnett get shot, she looked up and saw defendant standing outside of a vehicle shooting a gun just before she, too, was shot. The testimony of a victim, including identification testimony, is sufficient evidence to establish defendant's guilt beyond a reasonable doubt. *Davis*, 241 Mich App at 700; *People v Taylor*, 185 Mich App 1, 8; 460 NW2d 582 (1990). Further, both Howard and Barnett testified that they saw defendant at Harms School minutes before they were shot, and that while at Harms School, the vehicle in which defendant was a passenger blocked the vehicle in which Howard and Barnett were riding, and Barnett testified that defendant attacked the passenger side window of that vehicle with a wrench. The trial court heard the testimony presented by each witness, and found the testimony of Howard and Barnett to be credible, while rejecting the testimony of Jodi Kwilos, Angelica Barajas, and Melissa Arndt. This Court will not resolve credibility determinations anew on appeal. *Davis*, 241 Mich App at 700.

As previously observed, when determining whether sufficient evidence was presented at trial to sustain a conviction, all conflicts in the evidence are to be resolved in favor of the prosecution. *Roper*, 286 Mich App at 83; *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Thus, even though defendant submitted contradictory evidence, implying that another man who looked similar to defendant may have committed the alleged crimes, it was for the trier of fact to determine the weight and credibility of the proofs presented. *Davis*, 241 Mich App at 700; see also, *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998); *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008).

Additionally, despite defendant's contention otherwise, an expert witness was not needed at trial to assist the trier of fact in determining the credibility of the witnesses. The proponent of the evidence has the burden to establish admissibility and relevancy. *People v Crawford*, 458 Mich 376, 388 n 6; 582 NW2d 785 (1998). It was not for the trial court to decide, sua sponte, that an expert witness was needed to assist it in evaluating the credibility of the witnesses, and there was no basis for it to do so. Rather, expert testimony is only allowed into a trial if the trial court determines that the requirements of MRE 702[1] have been met. *People v Peterson*, 450

[1] MRE 702 provides, "[i]f the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

Mich 349, 361-362; 537 NW2d 857 (1995), amended 450 Mich 1212 (1995). Because defendant did not offer a proposed expert in eyewitness identification for the trial court to evaluate, there is no merit to his claim on appeal that the testimony of such an expert was required. The trial court, as the trier of fact in this case, properly evaluated the credibility of each witness based on his or her testimony during the trial; this Court will not disturb that credibility determination on appeal. *Davis*, 241 Mich App at 700.

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck